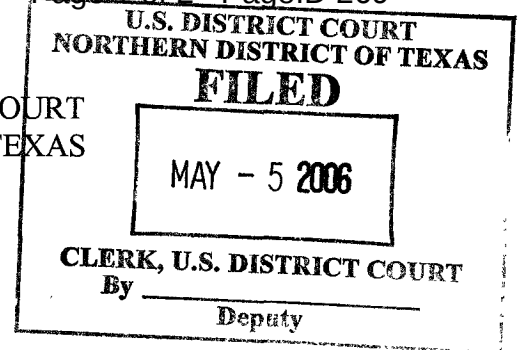


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION



UNITED STATES OF AMERICA

v.

TOBY DEAN WEATHERLY

§  
§  
§  
§  
§

2:03-CR-0054 (02)

**ORDER ADOPTING REPORT AND RECOMMENDATION,**  
**DISMISSING RESERVED ISSUE and DENYING**  
**MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE**

Defendant has filed a motion to vacate, set aside or correct sentence by a person in federal custody. The United States Magistrate Judge entered a Report and Recommendation on April 18, 2006 and therein recommended denial of defendant's claims, in part, with one issue being reserved for an evidentiary hearing. On April 28, 2006, defendant WEATHERLY filed a "Motion to Withdraw §2255." In the text of said motion defendant stated, "I am requesting to withdraw my lone alive issue of failure to file a direct appeal." Defendant requested cancellation of the evidentiary hearing which had been scheduled and the hearing was cancelled. No objections to the Report and Recommendation have been filed of record as of this date.

The United States District Judge has made an independent examination of the record in this case and has examined the Report and Recommendation of the Magistrate Judge. The District Judge is of the opinion the Magistrate Judge's Report and Recommendation should be, and hereby is, ADOPTED, and all of the claims addressed therein are found to be without merit. Based upon defendant's request to withdraw the issue of counsel's failure to file an appeal, it is the ORDER of the Court that such claim be DISMISSED. It is the further ORDER of the Court

that defendant's motion to vacate, set aside or correct sentence is, in all things, DENIED in its entirety.

IT IS SO ORDERED.

ENTERED this 4<sup>th</sup> day of May 2006.

  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE